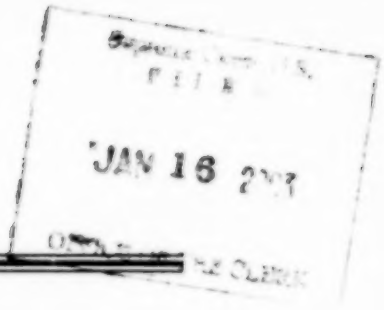

No. 01-1757

In The Supreme Court of the United States

MARION REYNOLDS STOGNER, Petitioner

vs.

PEOPLE OF THE STATE OF CALIFORNIA, Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

JOINT APPENDIX

Alternate Defender Office
Contra Costa County
William W. Veale
Chief Assistant Defender
Roberto Najera, Counsel of Record
Deputy Alternate Defender
Elisa Stewart
610 Court Street
Martinez, CA 94553
Telephone: (925) 646-1740

Attorneys for the Petitioner

Bill Lockyer
Attorney General of the State of CA
Robert R. Anderson, Chief Assistant
Jo Graves, Senior Assistant
Kelly E. Lebel, Deputy
Janet Gaard, Counsel of Record
Special Assistant Attorney General
1300 I Street
PO Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-5824

Attorneys for Respondent

TABLE OF CONTENTS

JOINT APPENDIX i

TABLE OF CONTENTS ii

APPENDIX A 1

APPENDIX B 5

APPENDIX C 9

APPENDIX D 10

APPENDIX E 14

APPENDIX F 15

APPENDIX G 19

APPENDIX H 36

APPENDIX I 37

APPENDIX J 38

APPENDIX K 39

APPENDIX L 40

APPENDIX A

MUNICIPAL COURT OF CALIFORNIA,
COUNTY OF CONTRA COSTA
DELTA JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA, — NO. 110032-0
DA NO. X 98 000097-6

VS.

COMPLAINT – FELONY

MARION REYNOLDS STOGNER, DEFENDANT./

01) PC 288(a)
02) PC 288(a)

The undersigned states, on information and belief, that MARION REYNOLDS STOGNER, Defendant, did commit a felony, to wit:

Violation of PENAL CODE SECTION 288(a) (LEWD AND LASCIVIOUS ACT UPON CHILD), committed as follows, to wit:

On or about January 1, 1955 through September 30, 1964, at Antioch, in Contra Costa County, the Defendant, MARION REYNOLDS STOGNER, did willfully, unlawfully, lewdly and feloniously commit a lewd and lascivious act upon and with the body of Jane DOE I, who was a child under the age of fourteen years, with the intent to arouse, appeal to and gratify the lust, passion and sexual desires of Jane DOE I and of the Defendant, MARION REYNOLDS STOGNER.

STATUTE OF LIMITATION (PC 803)

It is further alleged, that the crime alleged in Count One above, can be prosecuted pursuant to Penal Code section 803(g), in that:

On February 19, 1998, Jane Doe I reported to a law enforcement agency that she, while under the age of 18 years, was the victim of sexual crimes as specified in Penal Code section 803(g), to wit, 288;

The limitation period specified in Sections 800 and 801 has expired as to the charged crime;

The crime involved substantial sexual conduct as defined in Section 1203.066(b), to wit, oral copulation;

There is independent evidence that clearly and convincingly corroborates the allegations in Count One, to wit, the statement of another victim (Jane DOE II) alleging that she is a victim of similar crimes perpetrated by defendant as alleged in Count Two, below.

COUNT TWO:

The undersigned further states, on information and belief, that MARION REYNOLDS STOGNER, Defendant, did commit a felony, to wit:

Violation of PENAL CODE SECTION 288(a) (LEWD AND LASCIVIOUS ACT UPON CHILD), committed as follows, to wit:

On or about January 1, 1967 through September 27, 1973, at Antioch, in Contra Costa

County, the Defendant, MARION REYNOLDS STOGNER, did willfully, unlawfully, lewdly and feloniously commit a lewd and lascivious act upon and with the body of Jane DOE II, who was a child under the age of fourteen years, with the intent to arouse, appeal to and gratify the lust, passion and sexual desires of Jane DOE II and of the Defendant, MARION REYNOLDS STOGNER.

STATUTE OF LIMINATIONS (PC 803)

It is further alleged, that the crime alleged in Count One above, can be prosecuted pursuant to Penal Code section 803(g), in that:

On February 19, 1998, Jane Doe II reported to a law enforcement agency that she, while under the age of 18 years, was the victim of sexual crimes as specified in Penal Code section 803(g), to wit, 288;

The limitation period specified in Sections 800 and 801 has expired as to the charged crime;

The crime involved substantial sexual conduct as defined in Section 1203.066(b), to wit, oral copulation;

There is independent evidence that clearly and convincingly corroborates the allegations in Count One, to wit, the statement of another victim (Jane DOE II) alleging that she is a victim of similar crimes perpetrated by defendant as alleged in Count One, above.

COMPLAINANT REQUESTS THAT DEFENDANT(S) BE DEALT WITH ACCORDING TO LAW. I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: April 17, 1998 AT MARTINEZ, CALIFORNIA

_____

C. FORSYTH
COMPLAINANT

_____

BRIAN S. BAKER/dh
DEPUTY DISTRICT ATTORNEY
CONTRA COSTA COUNTY SHERIFF

APPENDIX B

NOT TO BE PUBLISHED IN OFFICIAL REPORTS
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FIRST APPELLATE DISTRICT
DIVISION FIVE

THE PEOPLE,
Plaintiff and Appellant — A084772

v.

MARION REYNOLDS STOGNER,
Defendant and Respondent. — (Contra Costa County Super. Ct. No. 9816224)

The sole question raised in this People's appeal is whether the Legislature's effort to revive the prosecution of certain sex offenses for which the limitations period has already expired (Pen. Code,§ 803, subd. (g)) is unconstitutional as an ex post facto law. In accordance with the recent decision in People v. Frazer (1999) 21 Cal.4th 737, we reverse the trial court's order denying the prosecution's motion to reinstate the complaint.

PROCEDURAL HISTORY

In April 1998, a criminal complaint was filed charging defendant with two counts of a lewd act upon a child (Pen. Code, § 288, subd. (a)) committed 25 to 43 years earlier. Count I alleged lewd conduct upon Jane Doe I between January 1, 1955, and September 30, 1964. Count II alleged lewd conduct upon Jane Doe II between January 1, 1967, and September 27, 1973. The complaint acknowledged on its face that the limitations period for the offenses had

expired, but the complaint alleged that the charges could be prosecuted pursuant to Penal Code section 803, subdivision (g) (hereafter section 803(g)).

Section 803(g), enacted in 1994, extends the limitations period for certain sex offenses to one year following a report to a law enforcement agency by a person of any age that he or she has been the victim of "substantial" sexual misconduct while under the age of 18.1 Defendant demurred to the complaint on the ground that section 803(g) constitutes an ex post facto law prohibited by the federal and state Constitutions. After the magistrate sustained the demurrer, the district attorney moved in superior court to reinstate the complaint. The motion was denied, and the People now appeal from the order denying that motion.

DISCUSSION

Our Supreme Court has rejected the argument that section 803(g) constitutes an impermissible ex post facto law. In the court's words: "Statutes regulating the time at which a future criminal prosecution may be filed do not implicate the manner

---

1 Section 803(g) presently provides in pertinent part as follows: "(1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she, while under the age of 18 years, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5. [¶] (2) This subdivision applies only if both the following occur: [¶] (A) The limitation period specified in Section 800 or 801 has expired. [¶] (B) The crime involved substantial sexual conduct...and there is independent evidence that clearly and convincingly corroborates the victim's allegation.....(3)(A) This subdivision applies to a cause of action arising before, on, or after January 1, 1994,...and it shall revive any cause of action barred by Section 800 or 801 if any of the following occurred or occurs:...(ii) The complaint or indictment is or was filed subsequent to January 1, 1997, and it is or was filed within the time period specified within this subdivision."

in which criminal conduct is defined and punished at the time it occurs—the sole concern of the ex post facto clause." (People f. Frazer, supra, 21 Cal.4th at p. 763.) Moreover, the court further concluded that section 803(g) is not unconstitutional in the abstract as a violation of substantive or procedural due process principles under the federal and state Constitutions. (21 Cal.4th at pp. 765-775.)

Because we are bound by that ruling, we are compelled to reverse the trial court's order.2 We observe, however, that the Supreme Court in Frazer left open the possibility of a due process claim in an appropriate case. The courts have long recognized that unreasonable delay between the time the offense is committed and an accusatory pleading is filed may violate a defendant's rights to a fair trial and due process of law under the federal and state Constitutions. (People v. Morris (1988) 46 Cal.3d 1, disapproved on other grounds in In re Sassounian (1995) 9 Cal.4th 535, 543, fn. 5, & 545, fn. 6, & cases cited in Morris at p. 37.) The Frazer court concluded that a determination of unconstitutional preaccusation delay can be made only upon consideration of the particular circumstances in an individual case. (Frazer, supra, 21, Cal.4th at pp. 774-775.) The case before it having arisen on demurrer, the court found the defendant's claim not ripe for adjudication and declined to decide whether the 12-year lapse between the alleged commission of the offense and the filing of the criminal complaint violated the defendant's procedural due process rights. (Id. At p. 775.)

---

2 In his respondent's brief on appeal, defendant raises for the first time a new constitutional argument that section 803(g) violates the separation of powers doctrine. Because that issue was not raised either by defendant below or by the People on appeal, we decline to address the issue.

In the present case, too, defendant's constitutional claim was addressed below on demurrer, and we have no information about the particular circumstances of the case. Whether precomplaint delay is unjustified and prejudicial is a question of fact for the trial court. (People v. Dunn-Gonzalez (1996) 47 Cal.App.4th 899, 911-912.) Accordingly, we will leave it to the trial court to examine in an appropriate proceeding the reasons for the 25-to-43-year delay and the resulting damage to defendant's ability to refute the charges.

DISPOSITION

The order denying the motion to reinstate the complaint is reversed.

_____

Jones, P.J.

We concur:

_____

Haning, J.

_____

Stevens, J.

A084772

APPENDIX C

Supreme Court of the United States

Marion Reynolds STOGNER, petitioner,
v.
CALIFORNIA.

No. 99-8895.

Oct. 2, 2000.

Petition for writ of certiorari to the Court of Appeal of California, First Appellate District, denied.

APPENDIX D

GARY T. YANCEY, District Attorney
CONTRA COSTA COUNTY
John C. Cope, BAR No. 154780
Deputy District Attorney
Courthouse, Fourth Floor
725 Court Street, P. O. Box 670
Martinez, California 94553-0150
Telephone: (925) 646-4500

Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THECOUNTY OF CONTRA COSTA

THE PEOPLE OF THE STATE OF CALIFORNIA,

v.

No.
DA NO. X 98 000097-6
INDICTMENT

MARION REYNOLDS STOGNER, DEFENDANT./

PC 288(a)
PC 288(a)

The Grand Jury of the County of Contra Costa hereby accuses MARION REYNOLDS STOGNER, defendant, of the crime of a felony, a violation of PENAL CODE SECTION 288 (LEWD ACT UPON CHILD UNDER AGE 14), committed as follows:

On or about January 1, 1955 through September 30, 1964, at Antioch, in Contra Costa

County, the Defendant, MARION REYNOLDS STOGNER, did willfully, lewdly, and unlawfully commit a lewd and lascivious act upon and with the body of Jane Doe I, a child who was under the age of fourteen years, with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of the Defendant and Jane Doe I.

JURISDICTIONAL ALLEGATION
STATUTE OF LIMITATIONS
MINOR SEXUAL ASSAULT CRIME

It is further alleged, that the crime alleged in Count One above, can be prosecuted pursuant to Penal Code section 803(g), in that:

On February 19, 1998, Jane Doe I reported to a law enforcement Agency that she, while under the age of 14 years, was the victim of sexual crimes as specified in Penal Code Section as specified in Penal Code Section 803(g) to wit, 288;

The limitation period specified in Sections 800 and 801 has expired as to the charged crime;

The crime involved substantial sexual conduct as defined in Section 1203.066(b), to wit, oral copulation and vaginal penetration;

There is independent evidence that clearly and convincingly corroborates the allegations in Count One, to wit, the statement of another victim (Jane Doe II) alleging that she is a victim of similar crimes perpetrated by defendant as alleged in Count Two below.

COUNT TWO:

The Grand Jury of the County of Contra Costa further accuses MARION REYNOLDS STOGNER, Defendant, of the crime of felony, a Violation of PENAL CODE SECTION 288 (LEWD ACT UPON CHILD UNDER AGE 14), committed as follows:

On or about January 1, 1964 through September 27, 1973, at Antioch, in Contra Costa County, the Defendant, MARION REYNOLDS STOGNER, did willfully, lewdly, and unlawfully commit a lewd and lascivious act upon and with the body of Jane Done II, a child who was under the age of fourteen years, with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of the Defendant and Jane Doe II.

JURISDICTIONAL ALLEGATION
STATUTE OF LIMITATIONS
MINOR SEXUAL ASSAULT CRIME

It is further alleged, that the crime alleged in Count Two above, can be prosecuted pursuant to Penal Code Section 803(g), in that:

On February 18, 1998, Jane Doe II reported to a law enforcement agency that she, while under the age of 14 years, was the victim of sexual crimes as specified in Penal Code Section 803(g), to wit, 288;

The limitation period specified in Sections 800 and 801 has expired as to the charged crime;

The crime involved substantial sexual conduct as defined in Section 1203.066(b), to wit, sodomy, vaginal penetration, and oral copulation;

There is independent evidence that clearly and convincingly corroborates the allegations in Count Two, to wit, the statement of another victim (Jane Doe I) alleging that she is a victim of similar crimes perpetrated by defendant as alleged in Count One, above.

GARY T. YANCEY
District Attorney

Dated: 3/13/01
at Martinez, California

JOHNC. COPE
Deputy
District
Attorney

* * * * *

A TRUE BILL

Dated: 3/13/01

at Martinez, California

_____
Foreman of the Grand Jury of the County of Contra Costa, State of California

* * * * *

Names of witnesses examined before the Grand Jury on finding the foregoing indictment:

1) MARGARET VAUGHN
2) CONNIE KILDARE
3) DETECTIVE CHRIS FORSYTH

APPENDIX E

SUPERIOR COURT OF CALIFORNIA,
MARTINEZ

DA: COPE CRIMINAL DEPT CALENDAR
PO: ANDERSSON 04/19//2001 8:30
PD: NAJERA 04/16/2001

JUDGE L. LINDENBAUM DEPARTMENT 031
16:16

CLERK CHERTKOW/MOYER
REPORTER: D. EASTRIDGE

NBR---DEFENDANT---CASE/DEFN---ROC---
ATTORNEY-TIME

---

034 STOGNER, MARION REYNOLDS 010398-6 01
MOTION 1:30
CUSTODIAL STATUS: OR

DOB: 06/13/1928 CHARGES: +PC 288(a)

DEMUR-RENEWED/TB
DEMURRER OVERRULED
REPORTER TO DO A TRANSCRIPT OF PREVIOUS RULING

SET: 05/01/01

APPENDIX F

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE
FIRST APPELLATE DISTRICT
DIVISION FIVE

FILED
MARION REYNOLDS STOGNER, **Court of Appeal-**
Petitioner **First App. Dist.**
AUG 28 2001 **RON D. BARROW, CLERK**

v. **BY** _____
DEPUTY

THE SUPERIOR COURT OF CONTRA COSTA COUNTY,
Respondent;

THE PEOPLE,
Real Party in Interest

Court of Appeal No. A094828
Contra Cost Co. Super. Ct. No. 010398-6

BY THE COURT:

On the court's own motion, the petition is deemed a petition for writ of mandate/prohibition.

The court has conducted a detailed review of the record and the parties' briefing regarding this petition. The court finds no merit to real party in interest's contention that the petition should be denied under the "abuse of the writ" doctrine. Based on the court's review of the merits of the petition, it

appears respondent superior court erred when it overruled petitioner's demurrer to the indictment.

In ruling on petitioner's demurrer, respondent was bound to follow authority holding that the limitations period of Penal Code[3] section 803, subdivision (g) ("section 803(g)") does not apply to an offense committed prior to January 1, 1985, if prosecution was barred on January 1, 1985 by the statute of limitations applicable prior to that date. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 454; *Lynch v. Superior Court* (1995) 33 Cal.App.4th 1223, 1228 ("*Lynch*"), review den., overruled on other grounds by *People v. Frazer* (1999) 21 Cal.4th 737 ("*Frazer*"); S 805.5, subd. (c)(1)("section 805.5(c)(1)").) In *Frazer*, the Supreme Court was not called upon to decide the particular question of statutory interpretation resolved in *Lynch* concerning the interplay between sections 803(g) and 805.5(c)(1); accordingly, *Lynch* remains binding authority on respondent. (See *People v. Saunders* (1993) 5 Cal.4th 580, 592, fn. 8["'an opinion is not authority for a proposition not therein considered'"].)

As a matter of statutory interpretation, section 805.5(c)(1) precludes application of section 803(g) where, as here, the statute of limitations for the underlying crimes expired prior to January 1, 1985. Contrary to real party in interest's suggestion, section 805.5 does not establish a limitations period, but instead defines the application of the chapter as a whole. Because sections 803(g) and 805.5 are capable of being harmonized, real party in interest's citation to the rule of statutory construction regarding general and special statutes is unavailing. Finally, nothing in the legislative histories of sections 803(g) and 805.5, of which this court takes judicial notice, reveals a

[3] All further statutory references are to the Penal Code.

legislative intent supporting real party in interest's interpretation of these sections. Indeed, although the Legislature was cognizant of *Lynch* and its statutory interpretation of sections 803(g) and 805.5(c)(1), it did not amend either statute in response to *Lynch*. (See *People v. Overstreet* (1986) 42 Cal.3d 891, 897 [Legislature is presumed to be aware of existing decisions and to have acted in light of them].)

Therefore, let an alternate writ of mandate issue commanding respondent Contra Costa County Superior Court, in *People v. Stogner*, case No. 010398-6, to set aside and vacate its April 19, 2001 ruling overruling petitioner's demurrer to the indictment, and to enter a new and different order sustaining petitioner's demurrer without leave to amend; or , in the alternative, to appear and show cause before Division Five of this Court why a peremptory writ of mandate should not be granted.

If respondent superior court complies with this court's directive set forth above, and does so on or before September 21, 2001, the court will dissolve the stay previously imposed, discharge the alternate writ, and dismiss the petition as moot. On or before September 25, 2001, petitioner shall inform this court by letter whether respondent superior court has complied with the alternate writ, and serve and file any new orders issued by respondent.

Should respondent court choose not to follow the above procedure, but instead to appear and show cause before this court why a peremptory writ of mandate should not issue, this matter will be heard before Division Five when ordered on calendar.

The alternative writ is to be issued, served and filed on or before August 28, 2001, and shall be deemed served upon mailing by the clerk of this court

of copies of the alternate writ and this order to all parties in case No. 010398-6 and to respondent superior court.

A written return to the alternative writ shall be served and filed on or before October 2, 2001. If, however, respondent superior court complies with the alternative writ, and proof thereof is filed herein on or before that date, then no return need be filed, the alternative writ will be discharged, and the petition will be dismissed as moot.

Date AUGUST 28, 2001 JONES, P.J.

APPENDIX G

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

MARION REYNOLDS STOGNER, A094828
Petitioner, (Contra Costa County Super. Ct. N. 010398-6)

V.

THE SUPERIOR COURT OF CONTRA COSTA COUNTY, Respondent;

THE PEOPLE,
Real Party in Interest.

In this proceeding, we revisit the question whether petitioner Marion Reynolds Stogner may be prosecuted for child molestations allegedly committed between 1955 and 1973. In an earlier decision, we concluded that prosecution was not barred by ex post facto or due process principles. *(People v. Stogner* (Oct. 14, 1999, A084772) [nonpub. Opn.].) Today we determine that prosecution is not precluded as a matter of statutory interpretation.

PROCEDURAL HISTORY

In April 1998, a criminal complaint was filed charging petitioner with two counts of a lewd act

upon a child Penal Code,[4] §288, subd. (a)) committed 25 to 43 years earlier. Count one alleged lewd conduct upon Jane Doe I between January 1, 1955, and September 30, 1964. Count two alleged lewd conduct upon Jane Doe II between January 1, 1967, and September 27, 1973. The complaint acknowledged on its face that the limitations period for the offenses had expired, but alleged that the charges could be prosecuted pursuant to section 803, subdivision (g) (hereafter § 803(g)).

* Pursuant to California Rules of Court, rules 976(b) and 976.I, parts II, III and IV of this opinion are not certified for publication.

Effective January 1, 1994, section 803(g) extended the limitations period for certain sex offenses to one year following a report to a law enforcement agency by a
person of any age that he or she has been the victim of sexual misconduct while under the age of 18.[5] Petitioner successfully demurred to the complaint on the ground that section 803(g) constitutes an ex post facto law, prohibited by the federal and state Constitutions. The district attorney then moved, unsuccessfully, in superior court to reinstate the complaint. On the People's appeal to this court, we reversed the trial court's order pursuant to the Supreme Court's holding in *People v. Frazer* (1999) 21 Cal.4th 737, that section 803(g) is not unconstitutional as an ex post facto law. *(People v. Stogner, supra,* A084772.)

---

[4] All undesignated section references are to the Penal Code.

[5] Subdivision (f) of section 803, enacted in 1989, provides a one year period for prosecution of child molestation charges following a report by a child. Section 803(g), in contrast, covers victims who have reached adulthood.

The complaint was reinstated in superior court but subsequently dismissed on motion of the prosecutor because the prosecutor had obtained a grand jury indictment. That indictment, filed March 14, 2001, again charges petitioner with two counts of child molestation (subd. (a)) on two separate victims, Jane Doe I and Jane Doe II, allegedly committed between 1955 and 1964 and between 1964 and 1973, respectively. Again the indictment alleges that the charges may be prosecuted pursuant to section 803(g).

Petitioner demurred to the indictment, asserting, inter alia, that section 805.5 bars application of section 803(g) to this case. Petitioner now seeks relief from the trial court's order overruling his demurrer and allowing the case to proceed to trial. We issued an alternative writ of mandate and stayed the pending trial date. By issuing an alternative writ of mandate, we "necessarily determined that there is no adequate remedy in the ordinary course of law and that [this] case is a proper one for the exercise of our original jurisdiction. [Citations.]" *(Westbrook v. Mihaly* (1970) 2 Cal.3d 765, 773, judg. vacated on other grounds (1971) 403 U.S. 915.)

DISCUSSION

I. STATUTE OF LIMITATIONS

At the time the offenses were allegedly committed (from 1955 to 1973), the statute of limitations specified a three-year period for prosecution of most felonies, including child molestation. (Former § 800, enacted by Stats. 1872; variously amended, as relevant here, from 1880 to 1972, repealed and replaced by § 800, Stats. 1984, ch. 1270, §§ 1, 2, p.4335.) Consequently, under the law

then in effect, prosecution of petitioner would have been barred after 1976.[6]

In 1984 the statutory scheme covering limitations periods (§ 799 et seq.) was repealed and replaced by a new statutory scheme, which increased the limitations period for some felonies. (Stats. 1984, ch. 1270, § 2, p. 4335 (the 1984 amendment).) The limitations period for child molestation, however, remained at six years from the date of commission. (§ 800.)

When the 1984 amendment was enacted, one of its provisions, section 806, subdivision (c)(1), provided that the new law was not applicable to offenses for which prosecution was already time-barred. In 1986, former section 806, subdivision (c) (1), was amended and renumbered as section 805.5. (Stats. 1986, ch. 248, § 161, p. 1264.)[7] As the California Law Revision Commission explained, "Subdivision (c)(1) limits

---

[6] Effective January 1, 1981, the limitations period for a violation of section 288 was extended to five years (Stats.1980, ch. 1307, § 2, p. 4422.) On January 1, 1982, it was extended to six years. (Stats. 1981, ch. 1017, § 1.5, p. 3926; Stats. 1982, ch. 583, § 1, p. 2544.) Under the case law existing at the time, the limitations period could not constitutionally be extended once the initial period had expired. (*Sobiek v. Superior Court* (1972) 28 Cal.App.3d 846, 849-850, now disapproved by *People v. Frazer, supra*, 21 Cal.4th at p. 765.) Even if the extension had applied, of course, it would have been inconsequential; the limitations period would have expired as of 1979.

[7] Section 805.5 provides: "(a) As used in this section, 'operative date' means January 1, 1985. [¶] (b) Except as provided in subdivision (c), this chapter applies to an offense that was committed before, on, or after the operative date. [¶] (c) *This chapter does not apply, and the law applicable before the operative date does apply, to an offense that was committed before the operative date, if:* [¶] (1) *Prosecution for the offense would be barred on the operative date by the limitation of time applicable before the operative date.* [¶] (2) Prosecution for the offense was commenced before the operative date." (Italics added.)

retroactive application that would have the effect of lengthening the statute of limitation to reflect the constitutional *ex post facto* prohibition where the statute of limitation has already run on the operative date." (Recommendation Relating to Statutes of Limitation for Felonies (Jan. 1984) 17 Cal. Law Revision Com. Rep. (1984) p. 324, italics in original.) Consequently, in the present case, because the previously-set limitations period applicable to petitioner's offenses had expired in 1976 (or perhaps 1979), the statutory scheme adopted in 1984 would not have permitted prosecution of them.

Effective, January 1, 1994, section 803(g) extended the limitations period beyond six years for certain sexual offenses committed against minors so long as the prosecution commenced within one year following a report to law enforcement authorities by the victim. The crime must have involved "substantial sexual conduct," and the victim's allegation must be corroborated by independent evidence.[8]

In 1996, after several Court of Appeal decisions had declined to apply section 803(g) retroactively to cases where the applicable statute of limitations had

---

[8] As originally enacted, section 803(g) provided in pertinent part: "Notwithstanding any other limitation of time described in this section, a criminal complaint may be filed within one year of the date of a report to a law enforcement agency by a person on any age alleging that he or she, while under the age of 18 years, was the victim of a crime described in Section 261, 286, 288, 288a, 289, or 289.5. this subdivision shall apply only if both of the following occur: [I] (1) The limitation period specified in Section 800 or 801 has expired. [¶] I (2) the crime involved substantial sexual conduct...and there is independent evidence that clearly and convincingly corroborates the victim's allegation...."(Stats. 1993, ch. 390, § 1, p. 2226.)

In 1996 the statute was amended to change, among other things, the opening phrase of section 803(g) so that it now reads: "Notwithstanding any other limitation of time described in this *chapter*...." (Italics added.)

already expired, the Legislature amended section 803(g) to declare that "[t]his subdivision applies to a cause of action arising *before, on, or after January 1, 1994*, the effective date of this subdivision , and if the complaint is filed within the time period specified in this subdivision, *it shall revive any cause of action barred by Section 800 or 801.*" (Stats. 1996, ch. 130, § 1 (the 1996 amendment) [Assem. Bill No. 2014, adding § 803(g)(3)(A)], italics added.)[9] As the Legislative Counsel's digest explained, the 1996 amendment makes the one-year time limitation "apply to a cause of action arising before, on, or after the effective date..., thereby reviving and extending already expired statute of limitations periods." (Legis. Counsel's Dig., Assem. Bill No. 2014 (1995-1996 Reg. Sess.) Thus, when the Legislature amended section 803(g) in 1996, it viewed the ex post facto issue far differently from the way it had in 1984, when the predecessor to section 805.5 was enacted: revival of an expired limitations period was not considered unconstitutional.

Section 803(g) was further amended in 1997, but the changes do not affect our analysis here. (Stats. 1997, ch. 29, § 1.) It bears noting, however, that the amendment left intact the language allowing criminal charges to be filed in cases that were time-barred before 1994. (See generally *People v. Frazer, supra*, 21 Cal.4th at pp. 747-749.)

---

[9] Before the 1996 amendment to section 803(g), the Supreme Court had granted review in five cases on the issue whether section 803(g) applied when the limitations period had already run. (*People v. Maloy* (S049313); *People v. King* (S05641 1); *People v. Sowers* (S051278); *People v. Richard G.* (S047826); *People v. Regules* (So48880).) On April 24, 1997, the Supreme Court dismissed review in all those cases in light of the legislative amendment. (See *People v. Frazer, supra*, 21 Cal.4th at pp. 745-746, fns. 5, 6, & 8.)

The Attorney General's request for judicial notice of the orders dismissing review is unnecessary and accordingly denied.

The question before us is whether the Legislature's expressed intent to apply section 803(g) to offenses committed before January 1, 1994, and to "revive any cause of action barred by Section 800 or 801" operates to allow prosecution of petitioner for the offenses committed between 1955 and 1973. We conclude that it does.

We begin our analysis with *People v. Frazer*, in which the Supreme Court examined whether section 803(g) applies when the statute of limitations had expired before the effective date of section 803(g), January 1, 1994. In *Frazer*, the crimes were allegedly committed in 1984 and the statute of limitations had expired in 1990, but the parties did not dispute that section 803(g) applied. Nevertheless, the court discussed in some detail the application of the statute. We quote pertinent portions of the court's analysis: "At no point has section 803(g) restricted the amount of time that may pass between commission of the crime and commencement of the prosecution....[¶]...[¶] [N]othing in section 803(g) provides that the crime must be committed, or that the limitations period in section 800 or 801 must expire, *after* January 1, 1994, in order for the extended one-year period to apply. The 1996 amendment left no doubt that section 803(g) applies even where the existing statute of limitations expired before January 1, 1994. [¶]...[T]he Legislature was highly familiar with the various Court of Appeal opinions filed in 1995 and 1996 that declined to apply section 803(g) where 'the previously applicable statute of limitations had expired prior to January 1, 1994, (the effective date of Section 803(g),' (Assem. Floor Anaylsis, Assem. Bill No. 2014 (1995-1996 Reg. Sess.) June 21, 1996, p. 1.) The legislative record identified these Court of Appeal decisions by name and original published citation, and summarized the statutory and constitutional

analysis each used to reach this conclusion. *(Id.* at pp. 1-2; Sen. Com. On Crim. Procedure, Analysis of Assem. Bill No. 2014 (1995-1996 Reg. Sess.) June 3, 1996, pp. 7-9.) [¶] According to the legislative record, the primary reason for amending section 803(g) in 1996 was to repudiate these Court of Appeal decisions insofar as they had construed the statute in such a restrictive manner. The 1996 amendment sought to 'clarify,' through express 'retroactivity' and 'revival' provisions, that section 803(g) permitted charges to be filed within one year of the victim's report, even where prosecution of the crime was otherwise time-barred before January 1, 1994. (Sen. Com. Crim. Procedure, Analysis of Assem. Bill No. 2014 (1995-1996 Reg. Sess.) June 3, 1996, pp. 57; Sen. Floor Analysis, Assem. Bill No. 2014 (1995-1996 Reg. Sess.) June 3, 1996, pp. 2-4.) [¶]....[¶] Thus, consistent with allegations in the complaint, section 803(g) serves as an exception to section 800 in the present case." *(People v. Frazer, supra,* 21 Cal.4th at pp. 752-753, italics in original.)

The court then went on to consider the constitutionality of such a broad extension of the statute of limitations, and the court concluded that section 803(g) is not an ex post facto law insofar as it applies to cases for which the statute of limitations had already expired. *(People v. Frazier, supra,* 21 Cal.4th at pp. 754-765.)

In the case before us, the statute of limitations had expired not only prior to the enactment of section 803(g) but even prior to the enactment of the entire chapter (ch. 2, tit. 3, pt. 2) of the Penal Code in which section 803(g) sits. Petitioner argues that section 803(g) cannot be applied to him because section 805.5, subdivision (c)(1), makes the entire chapter inapplicable to crimes for which the statute of limitations expired before January 1, 1985. We must

decide whether, properly interpreted, section 803(g) is an exception to section 805.5 or governed by it.

In construing section 803(g), we are guided by familiar rules of statutory interpretation. "The primary duty of a court when interpreting a statute is to give effect to the intent of the Legislature, so as to effectuated the purpose of the law. [Citation.] To determine intent, courts turn first to the words themselves, giving them their ordinary and generally accepted meaning. [Citation.] If the language permits more than one reasonable interpretation, the court then looks to extrinsic aids, such as the object to be achieved and the evil to be remedied by the statute, the legislative history, public policy, and the statutory scheme of which the statute is a part. [Citation.] ...Ultimately, the court must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and it must avoid an interpretation leading to absurd consequences. [Citation.]" *(In re Luke W.* (2001) 88 Cal.App.4th 650, 655.)

The opening phrase in section 803(g) seems designed to make it an exception to other provisions in the same chapter, including section 805.5: "Notwithstanding any other limitation of time described in this chapter...." (§ 803 (g)(1).) Petitioner, however, argues that the opening phrase of section 803(g) does not refer to section 805.5, because the latter does not describe a limitations period; it merely addresses the applicability and operative date of the chapter. We decline to make such a fine distinction. Section 805.5, subdivision (c)(1), states that, as to offenses for which prosecution is time-barred by the limitations periods applicable before January 1, 1985, the previous limitations periods apply. (See fn. 5, *ante.*) Section 803(g), in turn, sets a one-year-from-

date-of-report limitations periods, even those limitations periods referred to in section 805.5 that had expired before January 1, 1985.

Even if petitioner's interpretation of the initial clause in section 803(g) is reasonable, we believe that the Legislature intended to eliminate all constraints on the effect of section 803(g), except those contained in that subdivision. Section 803(g) was obviously designed to preclude child molesters from escaping punishment merely because the molestation was revealed after the victim became and adult and after the Limitations period had elapsed. Certainly the Legislature was aware that children who are the victims of sex crimes often cannot recognize or effectively assert their victimization until they have reached adulthood. Moreover, victims of sex crimes may be more likely to delay reporting because they are afraid of reprisals or fearful that they will not be believed. The legislative purpose behind section 803(g) was to prevent sex offenders from 'reaping the benefits of their victim's immaturity and psychological trauma, and the legislative history plainly indicate that section 803(g) was intended to create an exception to the statutes of limitations. (See, e.g., Assem. Com. On Pub. Safety, Analysis of Assem. Bill No. 290 (1993-1994 Reg. Sess.) Apr. 13, 1993, pp. 2-3; Sen. Com. On Judiciary, Analysis of Assem. Bill No. 290 (1993-1994 Reg. Sess.) July 13, 1993, pp. 2-3.)

Furthermore, the 1996 amendment to section 803(g) was intended to maximize the impact of the statute by ensuring that the prosecution's ability to file charges is "revive[d]" regardless of the passage of time between the commission of the crime and the commencement of prosecution, as long as the charges are filed within one year of the victim's report. "Sex crimes committed against children are the most heinous of offenses. Unfortunately, many don't bring

the crime to the attention [of] law enforcement until many years later, when the statute of limitations has already expired. Children become double victims-first victimized by the perpetrator and again by the judicial system. This measure will *guarantee* them their day in court." (Assem. Com. On Pub. Safety, Analysis of Assem. Bill. No. 2014 (1995-1996 Reg. Sess.) Apr. 9, p.1 [according to the author], italics added.)

The Legislature intended to override the Court of Appeal decisions that had refused to apply section 803(g) retroactively to crimes for which the statute of limitations had expired. *(People v. Frazer, supra*, 21 Cal.4th at pp. 752-753.) There is no hint in the legislative history that less than complete retroactivity was intended, so long as charges were filed within one year of the victim's report. Yet petitioner's interpretation of sections 803(g) and 805.5 would accomplish a significant constraint. We reject it.

We recognize that in *Lynch v. Superior Court* (1995) 33 Cal.Appl4th 1223, 1228, disapproved on the ex post facto issue in *People v. Frazer, supra*, 21 Cal.4th at page 765, the court took a contrary view and concluded that section 805.5, subdivision ©(1), makes section 803(g) inapplicable to crimes for which the statute of limitations had expired as of January 1, 1985. However, the court's discussion was cursory and did not address the precise points presented in the briefing before us. Furthermore, as the Supreme Court noted in *Frazer*, the Legislature's primary reason for amending section 803(g) in 1996 was to repudiate certain Court of Appeal decisions that had declined to apply the statute retroactively. *(People v. Frazer, supra*, at p. 753.) Among those decisions identified by the Legislature was *Lynch v. Superior Court, supra*, 33 Cal.App.4th 1223, which was described as holding "that application of section 803(g)...violated constitutional ex post facto principles,

and is prohibited as a matter of statutory construction in light of Penal Code Section 805.5...." (Assem. Com. On Pub. Safety, Analysis of Assem. Bill No. 2014 (1995-1996 Reg. Sess.) Apr. 9, 1996, p. 2.) The language of the 1996 amendment to section 803(g), added as a response to and a repudiation of *Lynch*, providing that the subdivision applies even to offenses committed before January 1, 1994, and that the subdivision "shall revive any cause of action barred by Section 800 or 801" (§ 803(g)(3)(A)), could not be more explicit in reflecting the Legislature's intent to override the existing limitations periods for those offenses for which prosecution is time-barred.

In light of the evident legislative purpose, we construe the beginning phrase of section 803(g)-"[n]otwithstanding any other limitation of time described in this chapter"-to reflect an intent to supersede section 805.5 insofar as it affects limitations periods. Although we are cognizant of the principle that statutes should be read in harmony with each other whenever possible, we cannot accept petitioner's argument that section 803(g) should be read as subordinate to section 805.5. In our view, section 803(g) creates an exception to section 805.5 and is not controlled by it.

Finally, interpreting the relationship between sections 803(g) and 805.5 as petitioner suggests would serve no apparent legislative purpose. As noted above, when originally enacted as part of a package of statutes, section 805.5 served the Legislature's goal of avoiding a conflict with the ex post facto clause by precluding prosecution of any offense for which the statutory period had run. With the enactment of section 803(g), however, the Legislature's goal changed, and section 805.5 played no role in the efforts to extend the limitations periods and revive

molestation charges that would otherwise be time-barred.[10]

In any event, even under petitioner's view that section 805.5 governs the application of section 803(g), section 805.5 would not affect all prosecutions equally. Section 805.5 would bar prosecution of any molestation that was already time-barred as of January 1, 1985, i.e., one that was committed prior to January 1, 1979, more than six years before the chapter's operative date. But section 805.5 would have no effect on offenses committed after January 1, 1979; the charges would be revived by section 803(g). Thus, under petitioner's interpretation, a complaint filed in 1994, after section 803(g) took effect, could have properly charged an offense committed in 1979, a then 15-year-old offense, but not one committed in 1978.[11] A complaint filed in 2001 could likewise charge a molestation which occurred in 1979, now 22 years after the fact. In 2009, a 30-year-old offense could be prosecuted. Petitioner's interpretation of section 805.5 would impose a limitations period based simply on the date of the occurrence of the offense-a factor unrelated to the traditional reasons for limitations periods.

In crafting an appropriate length of a limitations period, the Legislature balances competing interests. On the one hand, a statute of limitations protects an accused from the consequences of charges

---

[10] The operative date of section 805.5 is January 1, 1985. When enacted, section 805.5 applied to a chapter that did not include section 803(g). Given the specificity of section 805.5 regarding its operative date, we read it as applying to the chapter enacted in conjunction with it and not to subsequent legislation.

[11] This is true because a three-year statute of limitations applied to molestation offenses committed in 1978 and 1979. That period was lengthened to five years, effective January 1, 1982. (See fn.3, *ante*.) The 1978 offense was, therefore, time-barred before the effective date of section 805.5, while the 1979 offense was not.

grown stale with age: unreliable memories, dead or missing witnesses, and lost or contaminated physical evidence. (Recommendation Relating to Statutes of Limitation for Felonies (Jan. 1984) 17 Cal.Law Revision Com. Rep., *supra*, p. 308.) At the same time, the Legislature also considers the nature and seriousness of the offense.[12] Section 803(g) reflects a reasonable legislative concern for certain crimes where delayed reporting is common and serves to revive otherwise time-barred charges for a brief period after the victim's report is made. We can discern to logical reason why the Legislature would retain a limitations period based not on the age of the offense, but on its date of occurrence. We do not believe the Legislature intended this result, and we refuse to impose it.[13]

We recognize, of course, that the effect of our holding today is to make possible the prosecution of offenses reaching far back in time. We observe, however, that the express requirement in section 803(g) for a greater quantum of evidence provides

---

[12] Some offenses may be prosecuted at any time without regard to a limitations period. (§ 799.) Other offenses must be prosecuted within the prescribed limitations period, but the limitation period does not commence to run until the offense was discovered. (§803, subds. (c) & (e).)

[13] In light of our conclusion, we summarily reject petitioner's argument that section 803(g) revives only causes of action "barred by Section 800 or 801" and that this language must refer only to the version of sections 800 and 801 in effect when section 803(g) took effect (Jan. 1, 1994), not the version that had been repealed when the predecessor to section 805.5 took effect (Jan.1, 1985). This argument presumes that section 805.5, subdivision (c)(1), controls, but we have rejected that premise. In any event, the language of section 803(g) upon which petitioner relies seems to have been included in the statute solely to clarify that the one-year-from-date-of-report limitations period extends the time for prosecution and does not cut short the longer periods provided in sections 800 and 801.

*See footnote, *ante*, page 1.

some protection against the erosion of memories and evidence caused by the passage of time.

II. EX POST FACTO LAW*

Petitioner contends that *People v. Frazer*, *supra*, 21 Cal.4th 737, was wrongly decided and that the flaws in the California Supreme Court's reasoning are made apparent by the subsequent decision of the United States Supreme Court in *Carmell v. Texas* (2000) 529 U.S. 513. (See generally *In re Melvin J.* (2000) 81 Cal.App.4th 742, 758, fn. 7 [recognizing the erroneous analysis].) We are, of course, bound to follow our Supreme Court's decision in *Frazer*, and we leave it to that court to decide whether *Frazer* should be reexamined. In any event, we note that even after its decision in *Carmell*, the United States Supreme Court declined to review *Frazer*. *(People v. Frazer, supra*,21 Cal.4th *737*, cert. Denied (2000) 529 U.S. 1008, rhrg. Denied (2000) 530 U.S. 1284.)

III. DUE PROCESS*

Petitioner contends that prosecuting him for offenses for which the statute of limitations had expired would violate due process protections. An identical argument was rejected in *People v. Frazer*, *supra*, 21 Cal.4th at pages 765-775. Although the court held that a claim of *procedural* due process violation was not yet ripe for adjudication, see footnote, *ante*, page 1, the court concluded "there is no basis on which to facially invalidate section 803(g), either on the ground it's on-year limitations period leads to excessive charging delays, or on the ground section 80-3(g) applies even where the six-year period in section 800 'has expired.'" *(People v. Frazer, supra*, at p. 775, fn. Omitted.)

Following *Frazer*, in the appeal in petitioner's case, we recognized the possibility of a due process claim based upon the lengthy delay between the commission of the offenses and the filing of criminal charges. However, as in *Frazer*, we concluded that such a claim is not yet ripe for adjudication: "[D]efendant's constitutional claim was addressed below on demurrer, and we have no information about the particular circumstances of the case. Whether precomplaint delay is unjustified and prejudicial is a question of fact for the trial court. *(People v. Dunn-Gonzalez* (1996) 47 Cal.App.4th 899, 911-912.) Accordingly, we will leave it to the trial court to examine *in an appropriate proceeding* the reasons for the 25-to-43-year delay and the resulting damage to defendant's ability to refute the charges." *People v. Stogner, supra*, A084772, at p. 3; italics added.)

Once again, this issue comes to us after a ruling on demurrer, with no factual record developed on whether it would be fundamentally unfair to require petitioner to stand trial. Again we leave the matter for an appropriate proceeding in the trial court.

IV. SEPARATION OF POWERS*

Petitioner argues that section 803(g) is unconstitutional in that it violates the separation of powers doctrine by allowing the victim to control when charges will be brought. The argument is wholly meritless.

In virtually all criminal prosecutions victims make important decisions that may affect the ability of the prosecutor to successfully bring charges. Such decisionmaking has no powers doctrine prohibits one branch of government from infringing upon the

powers of another. [14] The victim of a crime is not a state officer charged with the exercise of either legislative, executive or judicial power.

Petitioner's argument rests upon the basic notions that the prosecutor has sole responsibility for prosecuting criminal offenses and a private citizen has no standing to compel the prosecutor to act. *(Dix v. Superior Court* (1991) 53 Cal.3d 442, 451; *Taliaferro v. Locke* (1960) 182 Cal.App.2d 752, 757.) Those principles have no application here. The authority of the public prosecutor is not impaired by section 803(g). The prosecutor retains sole discretion to determine whether to file charges, whom to charge, what charges to file, and what punishment to seek.

DISPOSITION

The alternative writ is discharged, the stay is lifted, and the petition is denied.

_____

SIMONS, J.

We concur.

_____

JONES, P.J.

_____

STEVENS, J.

---

[14] Article 111, section 3, of the California Constitution provides: "The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted in this Constitution."

APPENDIX H

COURT OF APPEAL, FIRST APPELLATE DISTRICT
350 MCALLISTER STREET
SAN FRANCISCO, CA 94102
DIVISION 5

MARION REYNOLDS STOGNER,
Petitioner,

v.

THE SUPERIOR COURT
OF CONTRA COSTA COUNTY
Respondent;
THE PEOPLE,
Real Party in Interest

A094828
Contra Costa County No. 0103986

BY THE COURT:

The petition for rehearing is denied.

Date: December 17, 2001 JONES, P.J.

APPENDIX I

Court of Appeal, First Appellate District,
Division Five – No. A094828
S103297

IN THE SUPREME COURT OF CALIFORNIA

En Banc

MARION REYNOLDS STOGNER, Petitioner,

v.

SUPERIOR COURT OF CONTRA COSTA COUNTY,
Respondent;

THE PEOPLE, Real Party in Interest

Petition for review DENIED.

Supreme Court
FILED
February 27, 2002
Frederick K. Olrich, Clerk
Deputy

GEORGE
Chief Justice

APPENDIX J

California Penal Code Section 288(a):

Any person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

APPENDIX K

California Penal Code Section 800:

An indictment for any other felony than murder, the embezzlement of public money, or the falsification of public records, must be found, or an information filed, within three years after its commission.

APPENDIX L

California Penal Code Section 803(g):

Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she, while under the age of 18 years, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(1) This subdivision applies only if both of the following occur:

(A) The limitation period specified in Section 800 or 801 has expired.

(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual, and there is independent evidence that clearly and convincingly corroborates the victim's allegation. No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.

(3)(A) This subdivision applies to a cause of action arising before, on, or after January 1, 1994, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if any of the following occurred or occurs:

(i) The complaint or indictment was filed on or before January 1, 1997, and it was filed within the time period specified in this subdivision.

(ii) The complaint or indictment is or was filed subsequent to January 1, 1997, and it is or was filed within the time period specified within this subdivision.

(iii) The victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was not filed within the time period specified in this subdivision, but a complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this subdivision is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(iv) The victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, but a new complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this subdivision is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(B)(i) If the victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, a new complaint or

indictment may be filed notwithstanding any other provision of law, including, but not limited to, subdivision (c) of Section 871.5 and subdivision (b) of Section 1238.

(ii) An order dismissing an action filed under this subdivision, which is entered or becomes effective at any time prior to 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision s constitutional, whichever occurs first, shall not be considered an order terminating an action within the meaning of Section 1387.

(iii) Any ruling regarding the retroactivity of this subdivision or its constitutionality made in the course of the previous proceeding, by any trial court or any intermediate appellate court, shall not be binding upon refiling.